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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,137	03/29/2004	Simon J. Porter	H0002969 DIV 1 (4760)	2160

7590

06/02/2006

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EXAMINER

SCHATZ, CHRISTOPHER

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/812,137

Applicant(s)

PORTER, SIMON J.

Examiner

Christopher T. Schatz

Art Unit

1733

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ They raise the issue of new matter (see NOTE below);

(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 33-43 and 46-50.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.

13. ☒ Other: See Continuation Sheet.


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SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

Continuation of 13. Other: At the outset, it is noted that applicant states in several places that the references are not concerned with modified atmosphere packaging of meats. Examiner respectfully submits that such an argument is not commensurate with the scope of applicant's claim. Applicant's claim as currently written recites "A process for forming a multilayered film including a layer comprising an antifog composition..." The claim says nothing about the intended use of the multilayered film. Regardless, examiner asserts that Coyle clearly intended the disclosed film to be used in modified atmosphere packaging. See Column 5, lines 8-10: "The resulting product is an excellent composite film, which has particular usefulness in vacuum formed packages." Also see column 6, lines 15-18.

Applicant should further note that Coyle need not expressly state that the saran layer prevents migration of anti-fog components. The ability of saran to prevent migration is an inherent property, and thus prevents migration regardless of whether or not Coyle recognizes that it does so. Applicant's arguments with respect to Fig. 2 and Fig. 3 of Coyle are not considered convincing as they refer to an embodiment of the invention different from the embodiment discussed by the examiner in the office action.

Applicant further states that Coyle has nothing to do with modified atmospheric packaging since the reference does not disclose the use anti-fog composition in any of the film layers. Examiner addressed this argument above.

Applicant further argues that "No specific reason is suggested for the addition of an anti-fog composition to the structure of Coyle et al." Examiner respectfully disagrees. The Final Action explicitly states "The use of an antifog composition is advantageous because, as disclosed by the prior art, said antifog composition allows the product packaged by the multilayered film to be visible" (page 4). Examiner asserts that one of ordinary skill in the art would have been motivated to add an anti-fog composition to the sealant layer of Coyle because said anti-fog composition aids in keeping the film clear. Additionally, the use of anti-fog additives is extremely well known in the art.

Examiner acknowledges that Coyle et al. discloses three different embodiments. This fact does not mean that the reference does not teach applicant's claimed method, because one of the embodiments does teach applicant's claimed method. In response to applicant's argument that Coyle does not recognize that a saran layer functions as a protective layer capable of prevention migration, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See Ex parte Obiaya, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). With respect to Bauer et al., examiner first asserts applicant's claim does not require the film to be used in modified atmosphere packaging. Regardless of what Bauer et al.'s end use for the film is, figures 7 and 8 clearly show that the film is wound up on a roll after manufacturing. Applicant attempts to argue that layer 14 is not a "protective" layer because of the "intended" function of the layer 14. These arguments are all reliant on the intended use of Bauer et al.'s film, and none of said arguments are commensurate with scope of applicant's claims. Examiner asserts that because layer 14 is exposed in the figures, layer 14 is analogous to applicant's claimed "protective" layer because said layer contacts another layer of the film when said film is rolled up. It should be noted that it is not necessary for Bauer et al. to disclose an anti-fog composition incorporated within, because examiner has already established above why it would have been obvious to incorporate an anti-fog composition into the sealant layer of Coyle.

Examiner acknowledges that Bauer et al. discloses the presence of an anhydride functionality. However, examiner respectfully submits that Bauer et al. does not necessarily disclose that said anhydride functionality is reacted with at least one of said polymers. Rather the reference discloses that one of several different polymers can be present in layer 14. The reference discloses that two of these polymers are PVC and polyurethane, and indicates that either PVC or polyurethane can be present, thus indicating to one of ordinary skill in the art that the polymers are alternatives be used in a sealant layer of multilayer polymer film. Applicant further states that "the polyurethane layer of Bauer et al. would not act as a "protective layer" since it would be in the inward facing layer that is in contact with the meat." This argument is not commensurate with the scope of applicant's claim since applicant's claim does not require that the protective layer not contact the meat. Furthermore, examiner asserts that layer 14, when rolled up, will contact an adjacent layer of the roll and thus can function as a "protective film." Applicant should note that Bauer et al. is used simply to disclose that the polymer compounds are known alternatives. Examiner asserts that this analysis hold true regardless of what other compounds are blended into said layer 14.

Applicant further asserts that Bauer et al. is non-analogous to Coyle because Coyle is concerned with a boilable bag and Bauer et al. is concerned with a package for cooking meats. Examiner asserts that both references are concerned with a method of manufacturing a packaging film in generally, and examiner respectfully submits that Coyle's scope goes beyond that of a boilable bag. The disclosure of a boilable bag was merely exemplarily.

As to Brazier et al., examiner respectfully submits that the reference clearly discloses a saran film (column 3, line 3). Applicant's argument that one of ordinary skill in the art would modify Figure 2 of Coyle rather than figure 1 is based on speculation. Examiner asserts that the advantages of biaxially oriented nylon as disclosed by Brazier et al. would apply equally to the embodiments of Coyle. This argument also fails to consider Brazier et al.'s disclosure of a saran layer as discussed above.

As to claim 46, examiner asserts that the motivation for manufacturing a three-layered film structure was clearly set forth by examiner on page 6 of the Final Rejection.

As to Ossian, examiner asserts that one of ordinary skill in the art would have readily recognized that the nylon/EVOH/nylon structure of Ossian provides favorable properties over a single nylon film, and that these advantages would be beneficial to the method of Coyle. See page 6 of examiner's previous office action. Applicant's statement that the polyethylene layer and not the nylon of Coyle would be substituted with the nylon/EVOH/nylon structure of Ossian is mere speculation and not supported with reasoning. Examiner asserts that Ossian is analogous art because the reference is concerned with the packaging and storing of food.